



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPF

MICHAEL J. SULLIVAN
DIRECTOR

February 14, 1995
AO-95-07

Mr. Gary Brennan
68 Dover Street, #2
Somerville, MA 02144

Re: Reporting of Contributors' Occupation and Employer

Dear Mr. Brennan:

This letter is in response to your recent request for an advisory opinion.

You have asked several questions concerning the reporting obligations of a political committee organized on behalf of a depository candidate.¹ In particular, your questions concern the requirement, added to the campaign finance law by chapter 43 of the Acts of 1994, to report the occupation and employer of persons who contribute \$200 or more during a calendar year. You have also attached a draft letter which you propose sending to this office "to prevent repeated OCPF requests [to political committees] for occupation and employer information."

You have attached a computer-generated Form D106 ("Report of Receipts") reflecting the occupation and employer of contributors to depository committees. In accordance with office practice, you have requested approval for the use of the form. Since the form is substantially identical to the form distributed by the office and provides all the statutorily required information, it may be used.

Section 18 of Chapter 55, as amended, requires all political committees to report (1) the occupation and (2) the employer or employers "of each person whose contribution or contributions in the aggregate equals or exceeds the sum of two

¹ Except where specified, the discussion in this opinion applies to all political committees.. "Depository candidates" include candidates seeking election to statewide or county office, and candidates seeking election to citywide offices, except school committee, in Boston, Springfield, Worcester, and Lowell. See M.G.L. c. 55, s. 19 as amended by c. 43 and c. 292 of the Acts of 1994.

hundred dollars within any one calendar year. . . ." However, if a candidate or political committee is not able to obtain both the occupation and the employer of a contributor contributing \$200 or more during a calendar year, after making a request when the contribution is solicited and an additional written request, the contribution may be kept by the committee, and the committee is not required to report more information than what was provided by the contributor. See M.G.L. c. 55, ss. 2 and 18, as amended.

The statute does not address the sufficiency of information which must be provided regarding contributors. The intent of the statute is complied with, however, where the most accurate information available to the committee, regarding both **employer and occupation**, is reported. If a contributor does not provide complete information in response to a committee's initial request, a committee must make the additional written request specified in the statute, for additional information. However, if the information provided by a contributor in response to the additional written request is still not complete, the committee may keep the contribution. The law does not require political committees to make further inquiries or exercise further efforts after the written follow-up inquiry specified in the statute, to assure that responses provided by contributors are complete and accurate. Such efforts, however, are consistent with the spirit of the law, and are encouraged.

You have asked four questions, each of which I will answer separately.

- (1) "How do you want the employer of self-employed people to be reported?"

You provided three examples of how self-employed persons might be reported: "Self-employed," "D/B/A," or "self-employed, D/B/A."

If James Smith has registered to do business as "Smith Contracting," Smith Contracting is Smith's **employer**. If Smith is a general contractor, "general contractor" would be an accurate description of his **occupation**. Reporting Smith's contribution as a contribution from James Smith who is "self-employed" would be incomplete since it would not provide any information regarding Smith's occupation.

If a person is self-employed and has not registered a business as a d/b/a, reporting the contributor's occupation as "self-employed" may sufficiently describe the contributor's employer. However, if the candidate or treasurer receiving a contribution knows that the contributor has a trade-name or d/b/a under which the contributor does business, the employer, i.e., the d/b/a or trade-name, should also be reported.

Similarly, if a person is a self-employed contractor, reporting a contribution as having been received from a "self-employed" person would not be complete since it would fail to include the person's occupation. The contribution

would have to be reported as coming from a self-employed contractor.

- (2) "How do you want retired or at-home/housewife/homemaker people to be reported?"

Contributions may be reported as coming from a "housewife," a "homemaker," or someone who is "unemployed" or "retired."² If a person is a homemaker and also is employed for compensation outside the home, the report should reflect the "outside the home" occupation and employer, even if such employment is part-time.

If a person is employed by two employers, both employers should be disclosed to this office if both provide the contributor with substantial income. If a second employer does not provide the contributor with substantial income, the contributor must report only the primary employer. For example, if in our previous example, James Smith is employed full-time as a general contractor by Smith Contracting, but also receives \$25 for teaching woodworking in a vocational high school once a week, the employer who must be reflected in the report is Smith Contracting.

Where a person is employed by one employer part-time "outside the home" and is also a homemaker, the person's part-time occupation and employer is the only occupation and employer which must be reflected on the candidate's or committee's report of contributions. The person's occupation as homemaker may also be reported, if desired.

- (3) "What constitutes insufficient information for occupation and employer? Is whatever the contributor tells us good enough, e.g., 'Self-employed Businessman'? Will any vague employer/occupation information generate letters from OCPF?"

In most instances, information regarding occupation and employer provided by a contributor will be sufficient and will not generate inquiries from OCPF. However, where a contributor merely says, at the time a contribution is solicited, that he is a "self-employed businessman," a candidate or political committee must request additional information, since absent additional information, the occupation of the contributor would not be fully disclosed. If additional information is not provided to the committee in response to the written follow-up request, the committee may keep the contribution.

Reporting a contribution as coming from a "businessman" provides no descriptive information regarding the contributor's occupation. A "businessman" might be a securities broker, insurance agent, banker, investment advisor, advertising

² "Housewife," "homemaker," "unemployed" or "retired," unlike "self-employed businessman" (see discussion in response to your next question) sufficiently describe both employer and occupation.

executive, or perhaps a manager of a company which manufactures electronic components.³

The reporting of vague information regarding either the occupation or employer of contributors may result in inquiries from this office.⁴ If contributor Smith indicates he is a "self-employed businessman," Smith may be accurately reporting his employer ("self-employed"), but he is not accurately reporting his occupation ("businessman").

Therefore, if a contributor indicates, in response to the initial solicitation or with an unsolicited contribution, that he is a "self-employed businessman," the committee must ask for more information regarding the occupation of the contributor. In addition, if the committee has reason to believe that Smith is using a d/b/a, the committee must ask him for further information regarding his employer.

Where a candidate or treasurer determines that the information provided by a contributor is incomplete, but wishes to keep the contribution, the committee should provide OCPF with a copy of the written request for information which was sent to the contributor.

Any political committee, whether depository or non-depository, may submit a letter or affidavit to OCPF, indicating that all individuals contributing \$200 or more in a calendar year have either provided complete occupation and employer information, or have received written requests for the information, in addition to an initial request at the time contributions were solicited.

The letter (a copy is attached to this opinion) which you propose sending to this office "to prevent repeated OCPF requests [to political committees] for occupation and employer information" would be helpful in establishing compliance with the requirements of s. 18. Although an affidavit would better serve that purpose, neither letter nor affidavit would necessarily establish compliance, and where a description of contributors' occupation and employer is not included in a report filed with OCPF, OCPF may request further information, even if a committee has filed a letter or affidavit. Written requests to contributors must be kept in committee files for at

³ For reference, committees may wish to consult the list of occupations in the Internal Revenue Service's Form 1040 Schedule C, "Profit or Loss from Business," or another similar list.

⁴ There may be instances where a contributor's title (rather than his occupation) when read with his employer, sufficiently identify his occupation. For example, "vice president, First Bank" would not result in an inquiry. In contrast, "vice president, Smith Co." would not be sufficiently descriptive and would lead to an inquiry.

least six years after the relevant election and are subject to inspection by OCPF. See M.G.L. c. 55, ss. 2 and 5.

- (4) "What procedure do you want campaigns to follow to report occupation/employer information obtained after the deposit sheets have been submitted to the bank? We seem to be required to ask for but not report the information after the initial deposit."

Form CPF D106 (the "Receipts and Expenditures Report") requires depository candidates to report the required occupation and employer information. The completed reports are reviewed by OCPF, after receipt from a committee's bank. Where the reports do not include complete information regarding a contributor's occupation and employer, OCPF will, on a future date, send follow-up letters requesting the required information to candidates and their committees.

When a depository committee receives the required information only after filing a completed Form CPF D106 with the bank, the committee should provide the newly obtained information to OCPF by letter or by mailing an updated or amended copy of the previously completed form. Letters or updated forms reflecting new occupation/employer information do not need to be sent to the committee's depository bank.⁵

This opinion has been rendered solely on the basis of the representations in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions.

Sincerely,



Michael J. Sullivan
Director

MJS/cp
Enclosure

⁵ When a non-depository committee receives the required information after filing a campaign finance report referring to a contribution, the committee should provide OCPF with a letter or amendment reflecting the new information.

SAMPLE LETTER ON OCCUPATION/EMPLOYER REPORTING
TO PREVENT NUMEROUS OCPF FOLLOW-UP LETTERS

Dear OCPF,

The XXXX Campaign, in order to comply with the new campaign finance regulations, will send letters requesting that person's occupation and employer to all contributors donating \$200 or more per calendar year who have not already provided the campaign with that information.

In order to prevent repeated OCPF letters to the campaign requesting the occupation and employer information which was either not provided upon the initial request or refused, we will be listing the words "Best Effort", as similar to Federal Election laws, to indicate that such information has been requested in writing a second time. Of course, copies of the letters sent will be on file with the campaign and available for inspection by OCPF personnel or their representatives to ensure that the campaign finance laws are being followed.

Sincerely,

Campaign Representative,
Buried under more Paper.

Form CPF D106: Receipts and Expenditures Report
Office of Campaign and Political Finance

Report of Receipts

Office of Campaign and Political Finance, One Ashburton Place, Boston, MA 02108 (617) 727-8352
Please print or type all information on this form

Candidate Name: Peter Forman
Committee Name: Peter Forman Committee
Name of Bank: US Trust, Boston
Reporting Period from: January 1, 1995 through January 15, 1995 Page # 19950001

M.G.L. c. 55 requires the name and residential address to be provided for all contributors who donate more than \$50 in a calendar year. In addition, the occupation and employer is also required for persons who contribute \$200 or more in a calendar year.

	Cash/ Bank #	Deposit Date	Name and Address (Alphabetical listing mandatory)	Amount \$	Occupation and Employer (Contributions \$200 or more)
1	test-1	01/01/95	Gary Brennan 68 Dover St, #2 Somerville, MA 02144	250.00	Computer Consultant Self-Employed
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
Contributions in excess of \$50 (or listed above)				250.00	
Contributions \$50 and under (not listed above)				0.00	Total Deposit (sum of all pages)
Total this page				250.00	\$ 250.00

Candidate or Committee: Fill out this side only in triplicate and take to the bank with your deposit. One copy should be receipted by the bank and then retained by the committee: the bank keeps two copies, one of which will be sent to OCPF.